IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.7266 of 1998

Dated: 31-01-2007

Between:

B. Laxmaiah, s/o late B. Bakkaiah,
aged about 23 years,
r/o Bituripalli village,
Bhimini Mandal,
Adilabad District.

... Petitioner

and

1. A.P.S.E. Board, rep. by its Member Secretary,
   Vidyut Soudha, Hyderabad and 2 others.

... Respondents

ORDER:

This petition is filed seeking *mandamus* directing the respondents to pay an amount of Rs.2,00,000/-, immediately, towards compensation for the death of the father of the petitioner caused due to the negligence on the part of the respondents, with a liberty to the petitioner to

file civil suit before the competent civil court.

2. It is the case of the petitioner that on 11-02-1997 as usual himself and his father went to their fields at Bituripalli village of Adilabad District and at about 9-30 P.M. a live electric wire broke and fall on the shoulders of his father, as a result of which his father charred to death. Hence, the petitioner filed the present writ petition seeking compensation of Rs.2,00,000/ stating that the said death was solely on account of the negligence on the part of the respondents.

3. Heard learned counsel for the parties.

4. Having heard learned counsel for the parties and upon perusing the affidavit filed in support of the writ petition, this Court is of the view that the relief sought for in this petition cannot be granted in exercise of the powers under Article 226 of the Constitution of India. It is only after recording of evidence by a competent Civil Court, in a suit, can decide as to whether the said death of the father of the petitioner was on account of the negligence on the part of the respondents or not, which aspect cannot be decided by this Court. No doubt, this Court as well as the Supreme Court in a number of cases including the case reported in **D.K. BASU v. STATE OF WEST BENGAL**[1], it was held as follows--

> "That the claim in public law for compensation for unconstitutional deprivation of fundamental rights to life and liberty, the protection of which is guaranteed under the

constitution is a claim based on strict liability and is in addition to the claim available in private law for damages and tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is in exercise of the courts under the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen, is therefore useful and at time perhaps the only effective remedy to apply balm to the wounds of

> the family members of the deceased victim, who may have been the bread winner of the family."

5. As stated above, in a case of this nature the rationale applied in those decisions cannot be applied.

6. Accordingly, the writ petition is dismissed with a liberty to the petitioner to approach the competent Civil Court for redressal of his grievance.

JUSTICE GOPALAKRISHNA TAMADA

Dt.31-01-2007
GLV

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[1] AIR 1997 (1) SCC 420